

ASSEMBLY BILL

No. 2846

Introduced by Assembly Member Maienschein

February 19, 2016

An act to amend Sections 610, 681, and 683 of, and to add Sections 675 and 676 to, the Probate Code, relating to power of appointments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2846, as introduced, Maienschein. Power of appointments.

Existing law provides a statutory body of law relating to powers of appointment, including the creation and exercise of, and the revocability of the creation, exercise, or release of, a power of appointment.

This bill would revise and recast those provisions. The bill would define the term “power of appointment” for those purposes. The bill would require, if a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property to be allocated in the permissible manner to carry out the intent of the powerholder. The bill would require, if a powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment to share fully in unappointed property. The bill would make property subject to a special power of appointment subject to the claims of creditors of the powerholder or of the powerholder’s estate or the expenses of administration of the powerholder’s estate under specified circumstances. The bill would make conforming changes to related provisions, and would make changes to provisions related to an unexercised general power of appointment, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 610 of the Probate Code is amended to read:

610. As used in this part:

(a) “Appointee” means the person in whose favor a power of appointment is exercised.

(b) “Appointive property” means the property or interest in property that is the subject of the power of appointment.

(c) “Creating instrument” means the deed, will, trust, or other writing or document that creates or reserves the power of appointment.

(d) “Donee” or “powerholder” means the person to whom a power of appointment is given or in whose favor a power of appointment is reserved.

(e) “Donor” means the person who creates or reserves a power of appointment.

(f) “Permissible appointee” means a person in whose favor a power of appointment can be exercised.

(g) “Power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

SEC. 2. Section 675 is added to the Probate Code, to read:

675. If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property shall be allocated in the permissible manner that best carries out the powerholder’s intent.

SEC. 3. Section 676 is added to the Probate Code, to read:

676. Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

SEC. 4. Section 681 of the Probate Code is amended to read:

681. ~~Property~~—(a) *Except as provided in subdivision (b), property covered by a special power of appointment is not subject to the claims of creditors of the donee powerholder or of the*

1 donee's powerholder's estate or to the expenses of the
2 administration of the donee's powerholder's estate.

3 (b) Property subject to a special power of appointment shall be
4 subject to the claims of creditors of the powerholder or of the
5 powerholder's estate or the expenses of administration of the
6 powerholder's estate under either of the following circumstances:

7 (1) To the extent that the powerholder owned the property and,
8 reserving the special power, transferred the property in violation
9 of the Uniform Voidable Transactions Act (Chapter 1 (commencing
10 with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil
11 Code).

12 (2) If the initial gift in default of the exercise of the power is to
13 the powerholder or the powerholder's estate.

14 SEC. 5. Section 683 of the Probate Code is amended to read:

15 683. Property subject to ~~an unexercised~~ a general power of
16 appointment created by the ~~donor~~ powerholder in the ~~donor's~~
17 powerholder's favor, whether or not presently exercisable, is
18 subject to the claims of the ~~donor's~~ powerholder's creditors or the
19 ~~donor's~~ powerholder's estate and to the expenses of the
20 administration of the ~~donor's estate~~ powerholder's estate, except
21 to the extent the powerholder effectively irrevocably appointed the
22 property subject to the general power of appointment in favor of
23 a person other than the powerholder or the powerholder's estate.